UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	Criminal No. 3:14CR227(AWT)
	:	
v.	:	
	:	
EARL O'GARRO, JR.	:	August 10, 2015

GOVERNMENT'S MOTION FOR OPENING STATEMENTS

The government respectfully moves that the parties be permitted to make brief opening statements in this matter, following the introduction of the case and any preliminary instructions by the Court.

The decision whether to permit "[a]n opening statement is a matter for the discretion of the court." *United States v. Young & Rubicam, Inc.*, 741 F. Supp. 334, 352 (D. Conn 1990); *see also United States v. Salovitz,* 701 F.2d 17, 20 (2d Cir. 1983); *United States v. Evans*, 629 F. Supp. 1544, 1546 (D. Conn 1986). The court's discretion "must be guided by the purpose of a trial: to permit a [party] a fair opportunity to present its case." *Young & Rubicam, Inc.*, 741 F. Supp. at 352 (citing *Evans*, 629 F. Supp. at 1544). Opening statements are warranted when they will "help jurors better understand the evidence when it is introduced." *Id.* at 353. After all, clarity is the hallmark of any fairly contested adversarial proceeding. Opening statements provide the jury with a preview, or a "table of contents," that succinctly sets forth each party's view of the evidence, the witnesses, the charges, and the defenses. Once oriented, the jury is better positioned to understand what is to follow and to perform its role as the finder of fact.

The factors that inform a district court's discretion include the nature of the case, the volume of anticipated evidence, the anticipated length of the trial, and the complexity of the issues presented. Applying these principles here, opening statements by the parties will be

essential to give the jurors an understanding of the case they are to hear, and will not result in any unfair prejudice to the defendant. As this Court has observed previously in the context of overruling a defense objection to opening statements, "[the defendant] has not articulated any unfair prejudice and seems to be simply pointing to the fact that if the evidence against him is better understood by the members of the jury, that is not in his interest. This does not constitute unfair prejudice." *See United States v. Austin*, 3:10CR248 (AWT) (Doc. No. 65) (attached as Ex. 1).

I. Nature of the Case

This case involves a complex series of distinct but interrelated wire and mail frauds in a highly specialized branch of the insurance industry. The defendant was the President, Chief Executive Officer, and an owner of Hybrid Insurance Agency, LLC ("Hybrid"), a wholesale insurance brokerage agency specializing in placing excess and surplus line insurance products. Between approximately April and October 2013, the defendant engaged in a fraudulent course of conduct aimed at enriching himself and keeping Hybrid afloat. The defendant's scheme had several aspects that involved the defrauding of various entities, including at least a half dozen corporate victims: (1) Capital Premium Financing, Inc. ("Capital Premium Financing"), which was a specialty lender that provided financing and administered the payment of premiums on behalf of insured entities; (2) AmTrust E&S Insurance Services, Inc. ("AmTrust"), which was an insurance underwriter that was affiliated with and wrote policies on behalf of Associated Industries Insurance Company, Inc. ("AIIC"), which was an insurance company offering excess and surplus line insurance products; (3) Starr Indemnity & Liability Company, Inc. ("Starr Indemnity"), which was an insurance company offering excess and surplus line insurance products; (4) National Casualty Company ("National Casualty"), which also was an insurance

company offering excess and surplus line insurance products; (5) Great American Insurance Company ("GAIC"), which was another insurance company offering excess and surplus line insurance products; and (6) the State of Connecticut Department of Economic and Community Development ("DECD"), which was a stage agency.

The wholesale insurance market is more complicated than the familiar retail market. The retail market deals in conventional insurance products (such as property and casualty insurance policies), and transactions involve a maximum of three parties: the insured entity, the retail agent, and the insurance carrier. Carriers operating in the retail market are often called "admitted carriers" because they are licensed by the state and subject to strict regulatory supervision. The wholesale market exists to provide coverage outside the risk preferences of carriers in the retail market. Carriers in the wholesale market, or "non-admitted carriers," typically are not licensed by the state and thus have the pricing flexibility to offer unusual or high-risk insurance coverage. There are four parties in any wholesale transaction: the insured entity, the retail agent, the wholesale broker, and the insurance carrier. Each of these parties only interacts with its immediate neighbors; thus, for instance, the wholesale broker should communicate only with the retail agent and the insurance carrier, and should have no contact with the insured entity.

The superseding indictment sounds in three counts, which are summarized below. The factual underpinnings for these counts are complicated and involve obscure aspects of the insurance industry, as well as the interplay between insured entities, retail agents, wholesale brokers, and insurance carriers—matters with which the average juror will have no familiarity. Accordingly, an opening statement to orient the jury is appropriate.

A. The Theft of $849,282.55 from Capital Premium Financing (Count 1)

In about April 2013, Hybrid was experiencing a cash flow shortage. To obtain cash, the defendant falsely represented to Capital Premium Financing that AmTrust and AIIC had issued insurance policies for four companies, that these companies were using Capital Premium Financing's services to finance their premium payments, and that Hybrid had brokered the contracts and was entitled to collect the premiums on behalf of AmTrust and AIIC. Three of the four companies, Blaque Rock Capital LLP ("Blaque Rock"); Marlbro's Restaurant Group LLP ("Marlbro"); and Epplied Staffing Solutions LLC, were registered with the Connecticut Secretary of State and were owned or operated by the defendant. The fourth entity, D&D Moving Company, was not registered with the Connecticut Secretary of State and was utilized by the defendant as a front in name only.

In fact, AmTrust and AIIC had not issued policies for any of these companies. Nevertheless, in reliance on the defendant's misrepresentations (and on prior dealings with Hybrid), Capital Premium Financing released $849,282.55 in premium payments to Hybrid on the phony Blaque Rock and Marlbro policies. These payments were made in three installments on May 6, June 19, and July 2, 2013. To perpetuate the scheme and prevent detection, on July 10, 2013, the defendant forwarded to Capital Premium Financing an e-mail purportedly written by an underwriter at AmTrust. In reality, the defendant was masquerading as the underwriter, having directed an IT consultant to create an e-mail address and domain name similar to that used by AmTrust. Acting in his assumed capacity and for the purpose of perpetuating the fraud and preventing discovery, the defendant provided fake policy numbers and bogus effective dates for the four policies purportedly issued by AmTrust and AIIC.

The defendant's scheme was discovered several days later when an officer of Capital Premium Financing contacted AmTrust directly and learned that AmTrust and AIIC had no record of the policies. The CEO of Capital Premium Financing then called the defendant on the telephone, and the defendant confessed his fraud to the CEO. Capital Premium Financing subsequently placed a lien on the defendant's phone. In addition, the defendant made a partial repayment to Capital Premium Financing in the amount of $300,000 on July 18, 2013. However, as described below, the defendant used funds fraudulently obtained from the City of Hartford ("the City") in order to make this partial repayment.

AmTrust and AIIC sued the defendant in state court for failing to remit $299,972 in premium payments on actual policies for which Hybrid *did* serve as broker (separate and apart from the premiums paid by Capital Premium Financing on the phony AmTrust and AIIC policies described above). During that litigation, the defendant admitted under oath that he had created a false AmTrust-like email address and domain in order to induce Capital Premium Financing to send him premium payments.

B. The Embezzlement of $868,244 in City Premium Payments (Count 2)

In late June 2013, Hybrid was selected as the new wholesale broker for the City's excess and umbrella insurance policies, which had an effective date of July 1, 2013. The premiums on these policies were supposed to be sent by the City to its retail agent, H.D. Segur, to pass along to Hybrid for remittal to the insurance carriers. Nevertheless, on or about July 18, 2013, the defendant contacted the City's Treasurer directly (bypassing the City's retail agent, H.D. Segur) and informed him that the City's coverage would be canceled if the carriers did not receive payment immediately. It is highly irregular for a wholesale broker, such as Hybrid, to have direct contact with an insured party; as noted above, typically a wholesale broker communicates only

with the retail agent and the insurance carrier. In any event, the policies were not in immediate danger of cancelation since the premiums were not due to the carriers until July 31, 2013.

At the City Treasurer's direction, the City wired $868,244 in premiums to Hybrid on July 18, 2013. Of that sum, $441,900 constituted a premium payment owed by the City to Starr Indemnity and $228,097 constituted a premium payment owed by the City to National Casualty. The defendant, however, did not remit the premiums to either Starr Indemnity or National Casualty.[1] Instead, he used $300,000 of the City's premiums to partially repay Capital Premium Financing, as described above in the Count 1 fraud. In fact, the defendant wired out the $300,000 to Capital Premium Financing only 17 minutes after the incoming $868,244 wire from the City.

In early September 2013, when he was questioned by the City, the defendant falsely stated that the premium payments had been sent to Starr Indemnity and National Casualty.[2]

C. The Fraudulent Application for State Assistance (Count 3)

In or about July 2013, at about the time he was stealing premiums as described above, the defendant submitted an application on behalf of Hybrid to DECD for $500,000 under the Small Business Assistance revolving loan program. The defendant personally completed the application, which required him to provide truthful information concerning Hybrid's liabilities, cash-on-hand, encumbered property, and related information. To increase the likelihood that the application would be accepted, the defendant provided false information to DECD, including by understating Hybrid's liabilities (*i.e.*, the stolen premiums). Based on the defendant's

1 The remaining $198,247 was passed along to a third insurance carrier with which the City had a contract, however.

2 Because Hybrid was functioning as Starr Indemnity's and National Casualty's agent, neither carrier canceled the City's coverage. As a result, the insurance carriers and not the City are the victims.

misrepresentations, DECD mailed a check for the first $250,000 tranche of the Small Business Assistance loan to the defendant on August 28, 2013.[3]

II. Volume of Evidence/Length of Trial

The United States expects to call 20 witnesses and to introduce approximately 50 exhibits. The exhibits will consist of insurance contracts, invoices, and receipts; emails; bank records; DECD loan documents; and records of the Connecticut Secretary of State. The witnesses will include, among others, representatives from Hybrid, the various victim companies, the City, and law enforcement. It is anticipated that the government's case will take five full trial days.

III. Complexity of Issues

The legal complexity of this case, which involves the mail fraud and wire fraud statutes, is compounded by the facts, which necessarily entail proof of intricate maneuvering by the owner of a wholesale insurance broker in the specialized world of high-risk insurance. The jury will be aided in their fact-finding role by an opening statement that orients them as to the nature of wholesale insurance brokers and the identity of the numerous corporate entities involved in the defendant's scheme.

Conclusion

Against this backdrop, opening statements are critical to provide context to the jury at the outset of a lengthy and legally challenging proceeding. A proper opening statement that describes the evidence in a coherent, ordered fashion would substantially help the jurors to understand the evidence as it comes in and to begin to relate the numerous pieces of evidence to

3 The second tranche was supposed to be disbursed after Hybrid met several job-creation conditions, which never happened.

each other and to the case as a whole. *See United States v. Dinitz*, 424 U.S. 600, 612 (1976) (purposes of an opening statement are "to state what evidence will be presented, to make it easier for the jurors to understand what is to follow, and to relate parts of the evidence and testimony to the whole . . . .") (Burger, C.J., concurring). In particular, an opening statement will help the jury to understand how the different aspects of the defendant's fraud are interrelated (*e.g.*, the defendant's use of the City's premiums to partially repay Capital Premium Financing, and the defendant's failure to list on his DECD loan application the liabilities accruing as a result of the premiums he stole from the various other victims in this case). As such, an opening statement in this case would "permit [the Government] a fair opportunity to present its case," *Young & Rubicam*, 741 F. Supp. at 352, and achieve "the practical purpose of directing the attention of the jurors to the nuances of the proposed evidence in such a way as to make the usual piecemeal presentation of testimony more understandable as it is received," *United States v. Stanfield*, 521 F.2d 1122, 1125-26 (9th Cir. 1975).

Wherefore, the government respectfully moves the Court for an order allowing the parties to make opening statements.

DEIRDRE M. DALY
UNITED STATES ATTORNEY

/s/ *Michael J. Gustafson*
MICHAEL J. GUSTAFSON
Federal Bar No. CT01503

AVI M. PERRY
Federal Bar No. phv07156

ASSISTANT UNITED STATES ATTORNEYS
157 Church Street
New Haven, Connecticut 06510
Tel. (203) 821-3700

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2015, a copy of the Government's Motion for Opening Statements was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ *Michael J. Gustafson*

MICHAEL J. GUSTAFSON
ASSISTANT UNITED STATES ATTORNEY